

From: Michael S. Tashbook
To: Microsoft ATR
Date: 1/23/02 2:17pm
Subject: Microsoft Settlement

To whom it may concern:

This letter is in response to the proposed settlement in the Microsoft antitrust case. Please add this message to the collection of comments on this settlement, as covered under the Tunney Act.

As a citizen of the United States and a computer scientist (I am currently pursuing my doctorate at the University of Virginia), I strongly object to the proposed sanctions on Microsoft for its anticompetitive behaviors. They do not go nearly far enough in punishing Microsoft for its actions, and they completely ignore one of the main ways in which Microsoft used its power as an operating system vendor to unfairly gain an advantage in the application market. Even more disturbing is the fact that these proposed remedies have opened a significant loophole that Microsoft is already preparing to exploit to the fullest.

To wit, section III(J) of the proposed settlement states, in part, that:

"No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or (b) any API, interface or other information related to any Microsoft product if lawfully directed not to do so by a governmental agency of competent jurisdiction."

In other words, Microsoft has no obligation to release their APIs to third parties. To a large extent, Microsoft was able to obtain its current anticompetitive position in the marketplace as a result of this behavior (keeping APIs secret). It should be obvious that Microsoft's in-house application developers had a significant advantage over third-party developers, due in no small part to the fact that the former had access to, and employed, undocumented API calls. If I have information that you do not, it should come as no surprise that my software will outperform yours. Requiring Microsoft to release all of its APIs to the developer community would provide everyone with equal footing, and would be a step towards correcting the current competitive imbalance.

The section quoted above should also be of concern in light of the recently-publicized memo from Bill Gates to the employees of Microsoft. In his memo, Mr. Gates stated that Microsoft would begin to place a much higher

priority on security measures in their products. This is a laudable goal (especially after the continuing saga of worms and viruses propagated by Microsoft's Outlook mail client), but it also provides an easy escape hatch for Microsoft. If Microsoft declares that the security of all of its code would be harmed by publishing API documentation (which is not inconceivable), then, under section III(J), they may keep all of their API documentation to themselves, perpetuating the circumstances (undocumented APIs) that produced the current situation.

The proposed settlement does not go far enough; in particular, it allows Microsoft to continue their monopolistic, anti-competitive behavior. For these reasons, I strongly object to the proposed settlement.

Sincerely,

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